

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERRY LEE SISCO,

Plaintiff,

No. CIV S-05-0867 GEB JFM P

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding in forma pauperis and in propria persona with a civil rights complaint pursuant to 42 U.S.C. § 1983. On December 22, 2006, findings and recommendations issued recommending that defendants Beruth, Schmidt, Spears and Falconer be dismissed based on plaintiff's failure to accomplish service of process in a timely manner. Fed. R. Civ. P. 4(m). Plaintiff has filed objections, claiming he sought an extension of the discovery period but had not received an order on that request. Plaintiff further claims he was incarcerated from August until November 2006 and was "unable to advance on this case." (Id.)

The instant action was filed on May 2, 2005. The first discovery deadline was set for April 28, 2006. See January 12, 2006 Scheduling Order. On July 28, 2006, the court granted plaintiff's request to extend the discovery deadline and a new discovery deadline was set for October 6, 2006. See July 28, 2006 Revised Scheduling Order.

1 Meanwhile, on March 8, 2006, findings and recommendations issued
2 recommending that plaintiff's claims against defendants Beruth, Schmidt, Spears and Falconer be
3 dismissed based on plaintiff's failure to timely accomplish service of process. Fed. R. Civ. P.
4 4(m). Plaintiff filed objections, and on June 14, 2006, the findings and recommendations were
5 vacated and plaintiff was granted an additional sixty days in which to provide the information
6 necessary to serve these defendants. Plaintiff was reminded that he could seek this information
7 through a proper discovery request served on the other defendants in this action or through the
8 California Public Records Act.

9 On September 29, 2006, plaintiff filed a letter addressed to the "Federal District
10 Court."¹ Plaintiff sought a second extension of the discovery deadline, claiming additional time
11 was required to enable plaintiff to locate defendants Benek,² T. Falconer, M.T.A. Schmidt and
12 C.O. Spears. (*Id.*) Appended to plaintiff's letter was a response from a Mr. Norman at the CDC
13 Training Facility who writes "we do not have current addresses on the above-referenced . . .
14 former employees." (*Id.* at 2.) Plaintiff did not provide any information as to how he intended to
15 locate these defendants or what discovery methods he would utilize to do so. Plaintiff has not
16 demonstrated he has attempted to obtain this information through discovery addressed to other
17 defendants in this action.

18 On December 13, 2006, answering defendants filed a motion for summary
19 judgment.

20 In an abundance of caution, the court will grant plaintiff one final opportunity to
21 attempt to locate these defendants. The December 22, 2006 findings and recommendations will
22 be vacated. Plaintiff will be provided a period of time in which he may attempt to locate and
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24 ¹ Plaintiff is advised that any request that this court issue an order must be made by
25 formal motion. See Fed. R. Civ. P. 7(b). Any motion filed must comply with the Local Rules of
26 this court.

² In the complaint, plaintiff names "M.T.A. A. Beruth." However, in plaintiff's last two
filings, plaintiff refers to "A. Benek" or "A. Benik."

1 provide the court with the location of defendants Beruth, Falconer, Schmidt and Spears.
2 However, plaintiff is cautioned that no further extensions of time will be granted. If plaintiff is
3 unable to provide the information necessary to serve these four defendants by the deadline, the
4 court will recommend that these defendants be dismissed from this case.

5 Good cause appearing, IT IS HEREBY ORDERED that:

6 1. The December 22, 2006 findings and recommendations are vacated.

7 2. Plaintiff's September 29, 2006 second request to extend discovery is granted.

8 Discovery is reopened for the limited purpose of allowing plaintiff to discover the current
9 addresses of defendants Beruth, Falconer, Schmidt and Spears.

10 3. Plaintiff is granted sixty days from the date of this order in which to provide the
11 court with the information needed to accomplish service of process on defendants Beruth,
12 Falconer, Schmidt and Spears. No further extensions of time will be granted.

13 DATED: February 5, 2007.

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16 UNITED STATES MAGISTRATE JUDGE

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